

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAMON GUTIERREZ,

Petitioner,

-against-

JAMIE LaMANNA,

Respondent.

19-CV-4530 (CM)

TRANSFER ORDER

COLLEEN McMAHON, Chief United States District Judge:

Petitioner, currently incarcerated at Green Haven Correctional Facility, brings this *pro se* petition for a writ of *habeas corpus* under 28 U.S.C. § 2254, challenging his current custody.

Petitioner previously filed a near duplicate of this petition in this Court. *See Gutierrez v.*

LaManna, No. 19-CV-4387 (GHW) (S.D.N.Y. May 17, 2019). On May 17, 2019, Judge Gregory H. Woods transferred the action under No. 19-CV-4387 to the United States Court of Appeals for the Second Circuit for authorization to proceed with a second or successive § 2254 petition. *See id.* (ECF No. 5).

This Court does not have jurisdiction to dismiss this successive petition as duplicative of *Gutierrez*, No. 19-CV-4387 (GHW). *See Torres v. Senkowski*, 316 F.3d 147, 151–52 (2d Cir. 2003) (noting that the Circuit has “held that a district court must transfer uncertified successive motions to [the Circuit] pursuant to 28 U.S.C. § 1631, the provision authorizing transfer to cure want of jurisdiction”) (citation omitted). Thus, Petitioner must move in the Second Circuit for permission to pursue this successive application.

For the reasons set forth in Judge Woods’ May 17, 2019 transfer order, this action is transferred to the Second Circuit.

CONCLUSION

The Clerk of Court is directed to assign this action to my docket, mail a copy of this order to Petitioner, and note service on the docket. In the interest of justice, the petition is transferred to the United States Court of Appeals for the Second Circuit. *See* 28 U.S.C. § 1631; *see also* *Liriano v. United States*, 95 F.3d 119, 122-23 (2d Cir. 1996) (*per curiam*). This order closes this case. If the Court of Appeals authorizes Petitioner to proceed in this matter, he shall move to reopen this case under this civil docket number.

Because Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. *See* 28 U.S.C. § 2253.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

The Clerk of Court is directed to docket this as a “written opinion” within the meaning of Section 205(a)(5) of the E-Government Act of 2002.

SO ORDERED.

Dated: May 28, 2019
New York, New York



COLLEEN McMAHON
Chief United States District Judge